NUP
998
P53

T
be st
seal
worl
valu
by t
heav
duce
mad
ty o
affor
the g
lege,
ican
Ame
porta
factu
easil
It is
less
both
espe
fixe
fron
whi
ther
mak
give

NWP
998.1
P538

THE BEHRING SEA CONTROVERSY.

BY THE HON. E. J. PHELPS.

THE question involved in what is called the Behring Sea controversy may be stated in few words. The Alaskan fur-seal fishery is the most important in the world. It was a material element in the value of that province when purchased by the United States from Russia, at a heavy cost, and one of the principal inducements upon which the purchase was made. Since Alaska became the property of the United States, this fishery has afforded a very considerable revenue to the government by the lease of its privilege, has engaged a large amount of American capital, and the industry of many American people. The product is an important article of commerce and of manufacture, the loss of which would not be easily supplied. The seal is amphibious. It is not a denizen of the sea alone, still less a "wanderer of the sea," but requires both land and water for its existence, and especially for its propagation. It has a fixed habitation on the Alaskan shore, from which it never long departs, and to which it constantly returns. It belongs therefore to the territory on which it makes its home, and where it breeds, and gives rise there to a business and a revenue, as much entitled to the protection of the government as the larger commerce of the port of New York. It is the habit of this colony of seals to cross through the sea, during breeding time, to the Pribyloff Islands, which form a part of Alaska, where their young are produced and reared. More sagacious and peculiar in their habits than most animals, and almost human in some of their instincts, this process of seclusion has become essential to successful propagation. It must be tolerated and protected, or propagation will cease. In making the passage, the seals necessarily cross a portion of the Behring Sea which is more than three miles outside of either shore, and is therefore beyond the line usually regarded as the limit of national jurisdiction on the borders of the ocean. It has been the custom for several years past for certain Canadian vessels fitted out for the purpose to intercept the seals on this passage while outside of the three-mile line, and to shoot them in the water. Many of the animals thus destroyed sink and are lost. Those that are saved are considerably diminished in value by their condition. Still, there is

PROVINCIAL LIBRARY
VICTORIA, B. C.

a certain profit in the business, inhuman and wasteful as it is. But the necessary result of it, if continued, will be the extermination of the seals in Alaska within a very short time, the destruction of the interests and industries dependent upon them, and in a large measure the withdrawal of the fur-seal skin from commerce and from use. The certainty of this result is proved by what has already taken place. The Secretary of State in his last (published) communication to the British government on this subject, makes the following statement: "From 1870 to 1890, the seal fisheries, carefully guarded and preserved, yielded 100,000 skins each year. The Canadian intrusions began in 1886, and so great has been the damage resulting from their destruction of seal life in the open sea surrounding the Pribyloff Islands, that in 1890 the government of the United States limited the Alaska Company to 60,000 skins, but the company was able to secure only 21,000 seals."

The simple question presented is whether the United States government has a right to protect its property and the business of its people from this wanton and barbarous destruction by foreigners, which it has made criminal by act of Congress; or whether the fact that it takes place upon waters that are claimed to be a part of the open sea affords an immunity to the parties engaged in it which the government is bound to respect. To the ordinary mind this question would not appear to be attended with much difficulty.

During the administration of President Cleveland, and as soon as these depredations were made known, our government applied to that of Great Britain, setting forth the facts, and proposing that a convention should be entered into between the two nations, in which Russia should be invited to join, limiting the season of the year in which seals might be taken, and prescribing a close time covering the period of breeding, within which they should not be molested: the provisions of the convention to be carried into effect by suitable legislation in the three countries, and under the concurrent authority of their governments. This proposal was not met on the part of the British government by any assertion of the right of the Canadians to destroy the seal in the manner complained of, or by any vindication of the propriety of that business. The expediency of the convention was at once conceded, and the concurrence of Great Britain promised; and the United States government was requested to prepare and furnish a draft of such regulations as were deemed necessary to accomplish the object. Such a draft was soon after transmitted, and no question ever arose between the governments in respect to its details. The Russian government, whose concurrence in the convention was invited through its ambassador in London, at once agreed to join in it, and expressed its desire that the agreement should be consummated as soon as possible. It was supposed on the part of the American government that the whole matter was satisfactorily arranged, and only awaited the execution of the formal agreement, and the passage of the proper legislation by Parliament and by Congress. But after a considerable delay it transpired that an unexpected obstacle had arisen. It came to be understood that Canada, whose people were carrying on the business in question, declined to assent to the establishment of the proposed restrictions upon it. Having no interest whatever in the preservation of the seal, nor in the property to which it gave value, they preferred to make such profit as they could out of its extermination. And this, after some time spent in what was no doubt a sincere effort on the part of the British government to overcome the objections of Canada, brought the attempt at a convention virtually to an end. These facts are taken from the published despatches of the American Minister at London to his government, without attempting to state anything not already laid before the public.

The laws of all civilized nations, based upon the ordinary dictates of humanity as well as upon the requirements of self-interest, accord to all wild animals beneficial to mankind and not noxious or mischievous, protection from destruction during the necessary periods of gestation and of rearing their young. Under the provisions of such game laws as everywhere prevail, a man may not slay during that time, even upon his own land, any of those denizens of forest, field, or stream, which the Creator has placed there for the benefit or sustenance of man. The woodcock and the partridge minister rather to sport than to profit, yet they are protected in the breeding season in all coun-

163434

Pacific N. W. Historical Coll.
PROVINCIAL LIBRARY
VICTORIA, B. C.

tries, and preserved from extermination. Nowhere are such salutary laws more rigid in their enactments, more thoroughly enforced, or more universally respected than in Great Britain. It would be difficult to exaggerate the barbarity or the wastefulness of the slaughter of wild creatures when heavy with young, so harmless, so interesting, and so useful as these, by the destruction of two lives for half the proper value of one, and that one saved only half the time. If the law of humanity does not terminate with humanity, and can be said to extend to those lower orders of creation that minister in their humble way to human enjoyment, surely such a practice as this can find no excuse or palliation. The repression of it ought not to be the subject of a moment's debate between Christian nations, if it requires their mutual action. But the case does not rest principally upon sentimental or humanitarian considerations. These animals, as has been pointed out, are a large and valuable property, an established and proper source of public and private revenue and of useful industry, all soon to perish unless the protection which humanity demands can be extended to them. Why should they not receive it?

It is said that the government is prevented from discharging this obvious duty, because the sea is free; that no nation can undertake to close the ocean against the ships of any other nation, nor to exercise over them, beyond three miles from the coast, any paramount jurisdiction. This general proposition will not be questioned. The Secretary of State in his correspondence with the British government on this subject, has undertaken to maintain that these waters are not, as between that country and the United States, a part of the high or open sea; that by the former treaty between Great Britain and Russia, a right of jurisdiction over them was reserved to the latter country, and was conceded and acquiesced in by the former; and that the same right was virtually set forth in the treaty of 1824 between Russia and the United States. The British government, while denying this conclusion, admits that whatever right of this sort Russia had under that treaty as against Great Britain, passed to the United States when they purchased from Russia the territory to which it attached. It is not proposed in these observations, nor would it be within their limit, to attempt to restate the argument of Mr. Blaine on this point. It is presented with great ability, fulness, and clearness, and there seems to be nothing left to be added in either particular. It depends principally upon historical evidence, which must be closely examined to be understood; and that evidence certainly tends very strongly to support the result that is claimed by the Secretary. It in this position he is right, it is the end of the case. Because it brings these waters, as against Great Britain at least, within the territorial jurisdiction of the United States, not by their geographical situation alone, but by the virtual provisions of the treaties among the high contracting powers concerned.

But suppose that upon this question Mr. Blaine is wrong and Lord Salisbury is right, and that the waters between the main-land and the Pribyloff Islands outside the three-mile limit are to be regarded as a part of the open sea. In what does the freedom of the sea consist? What is the use of it that individual enterprise is authorized to make, under that international law which is only the common consent of civilization? Is it the legitimate pursuit of its own business, or the wanton destruction of the valuable interests of nations? If the government of the United States is restrained by any principle of law from protecting itself and its citizens against this great loss, it must be because the Canadian ship-owners have a right to inflict it. That is to say, that these acts, prohibited by American law, unlawful to Canadians wherever territorial jurisdiction exists, which would be speedily made unlawful within their own territory if any seals existed there, and which are wanton and destructive everywhere, become lawful and right if done in the open sea, and are therefore a proper incident to the freedom of the sea. The clear statement of this proposition refutes it, in the minds of all who are capable of a sense of justice, and able to discriminate between right and wrong. The freedom of the sea is the right to pass and repass upon it without hinderance or molestation, in the pursuit of all honest business and pleasure, and it extends no further. It never authorizes injury to the property or just rights of others, which are as sacred at sea as on shore. This colony of seals,

making their home on American soil, and unable to exist without a home upon some soil, belong to the proprietors of the soil, and are a part of their property; and do not lose this quality by passing from one part of the territory to another, in a regular and periodical migration necessary to their life, even though in making it they pass temporarily through water that is more than three miles from land.

It is true that among the unquestionable rights of mankind in the open sea is that of fishing. The fish that live in the sea are common property, attached to no territory and belonging to no jurisdiction until they happen to wander into it, and then only while they remain there. But the seal is in no sense a fish. As has been pointed out, it does not remain in the sea, but has a habitual abiding-place upon the land, to which it regularly resorts, and where it may be said to belong. But even in the pursuit of fishing in the open sea, let us suppose that the people of one country should invent a method so wasteful and so destructive as necessarily to result in the speedy extermination of all fish, and should propose to practise that method of fishing in waters adjacent to the territories of another nation, though three miles from land, to the certain ruin of its established industry and of one of its important means of sustenance and of revenue. Would that nation and others interested in the preservation of fish be compelled to stand helplessly by and permit such an outrage to be accomplished? Must all nations lose their share in the common stock, and the world be deprived of its benefit, because no one of them has a right to close up or control the open sea? Or would it be likely to be discovered that rights on the sea, like all rights recognized by civilized law, must be exercised with a due regard to the rights of others; and that the common right of free fishing did not include the right of wanton and barbarous destruction of all fishery? Doubtless in that case as in this, some lawyers would be prepared to demonstrate that, much as the calamity might be deplored, there was really no precedent to be found in the books for any interference to prevent it, because no such wrong had ever been attempted before; and to point out that to proceed without a precedent would be to set all jurisprudence at naught. Precedents illustrate principles, but do not create them. They are only valuable so far as they display the application of principles to new cases. They do not arise out of rights, but out of attempted wrongs. A right cannot obtain the sanction of a precedent, until it is invaded. And an invasion of a right is not without redress, though it may never have been invaded in the same way before. There must always be a first case, but not necessarily therefore a remediless case. When the case arises that justifies a precedent, the occasion for making it should be availed of, for the sake of the law, as well as for the sake of the right.

When the extent to which the sea may be used, and the purposes for which its pathless highway may be employed, are considered in the light of the rules that have been established by the general consent of mankind, it will be seen that the freedom of the sea is largely a figure of speech. It is not free, it has never been free, for any purpose whatever, injurious to the rights, the property, or the honor of a nation able to defend itself, or even to those interests of a nation which are paramount in importance to the mere profit to be made out of an otherwise lawful act that endangers them. Rights upon the sea are more restricted by considerations of that sort than any other rights that are enjoyed by mankind. And the rights of self-defence there are broader, and are measured by a more arbitrary standard. Of the occasion, the necessity, and the extent of self-defence, every nation must judge for itself, since there is no common tribunal to appeal to, and no redress to be obtained except such as it shows itself able and determined to exact. The restraint upon it, in so doing, is found in the general opinion of the world, guided by admitted principles and established usages. Were it desired to extend these observations into a treatise upon the freedom of the sea, it would not be difficult to show how numerous are the restrictions to which that right has been subjected, and in how wide an analogy the necessity on which they stand finds illustration. The concession to every country bordering upon the sea of a certain authority over so much of it as is comprehended within three miles of the coast is but an instance of such a restriction. The sea within that line is no part of the territory of a nation. All ships have a right

to pass and repass there, and the government cannot exclude them, yet in all business done within that limit they are subject to such reasonable regulations and conditions as the government thinks proper to impose. The slave-trade between Africa and countries where slavery was legal was once a legitimate commerce, to which the sea was open. When considerations of humanity and wiser policy united to discountenance that traffic, the sea was closed to it. When a nation establishes a blockade of the ports of another nation with which it is at war, neutrals having no part or interest in the quarrel, must submit to discontinue their just and lawful trade with such ports, though the blockaded inhabitants may desire and greatly need to continue it. Neutrals must also in case of war abstain from carrying to either party articles contraband of war, a term of vague and undetermined import; although such articles are the subject of legitimate manufacture, sale, and transportation all over the world. Under like circumstances the neutral carrying trade upon the high sea is largely impeded and embarrassed in the interest of belligerents. Freight belonging to citizens of either of the countries at war has been subject to be taken by the other belligerent out of neutral ships. The rule that the neutral flag covers the cargo, if it may be said to be established, is only of recent date. The right of search of vessels at sea upon lawful business is an established right, not only against neutrals in time of war, but by one nation against the ships of another in time of peace, where the protection of national interests, like revenue, requires it. Illustrations of this sort might be multiplied. And besides the restrictions thus established by rules that have become general and settled only because they have been insisted on and enforced by nations to whose emergencies they were necessary, maritime history abounds with examples of the application of the same principle to special cases claimed to be within its scope, which had never occurred before, and were not likely to occur again. The theoretical rights of individuals upon the sea always have been and always must be subject to be limited, even in the pursuit of proper and justifiable business, by the just necessities and reasonable requirements of nations. The sea is the common property of mankind, and all rights upon it are qualified rights.

By no nation in the history of the world has this principle been more frequently or more resolutely asserted than by Great Britain. She has never permitted any abstract theory of the freedom of the high sea to become a justification for inflicting serious injuries upon her interests or her property, for the sake of the trifling profits to be realized by the assailant. The instance cited by Mr. Blaine, in the communication before mentioned, of the act of Parliament passed during the captivity of Napoleon upon the island of St. Helena, forbidding ships of other nations, as well as those of Great Britain, to trade with or touch at the island, or to hover within eight leagues thereof upon the sea, under penalty of seizure and forfeiture, is but one among many illustrations of this policy. That upon ordinary principles the high sea could not be closed to ships of other countries for the distance of eight leagues from the shore, was clear. It might have been plausibly argued as a consequence, that if a foreign ship-master chose to earn his charter money by waiting on the high sea in time of peace to transport Napoleon to France, if he happened to make his escape from captivity by his own efforts and to reach the ship in safety, that was a business lawful to any person not amenable to British law, and who in transacting it did not invade British territory. Strictly, all this was true. But where the consequences to Great Britain as well as to the rest of Europe might have been so serious had the Emperor been enabled again to take the field, and to involve those countries in war, it was justly felt that no considerations of private money-making should authorize the use of the sea for such a purpose. Nor has the action of Great Britain, in taking these extreme precautions to prevent it, ever been condemned, though it involved closing the high sea against a purpose not in itself unlawful, and perhaps, in the view of Frenchmen, meritorious. The case of the *Caroline*, in 1837, when the British forces pursued a schooner into our own waters, and captured and burned it, killing and wounding some of its crew, because it was engaged in the business of conveying arms and stores in furtherance of the Canadian rebellion, is another example of the same general principle. The act, which was *prima facie* a clear viola-

tion of the rules of international law, which prohibit a combatant from pursuing its enemy into neutral waters, was justified by the British government upon the ground of necessary self-defence, and no apology was ever made for it. The force of this plea was admitted by Mr. Webster when Secretary of State, in correspondence with the British government on the subject, provided the necessity of self-defence was made out. But he contended that the necessity must be "instant, overwhelming, having no choice of means, and no moment of deliberation," and that "the act justified by the necessity of self-defence must be limited by that necessity, and kept clearly within it." The other instance cited by Mr. Blaine, of the pearl fisheries established in the Indian Ocean by a British colony, and the control exercised over foreign vessels engaged in that business outside the three-mile limit and in the admitted open sea, is directly in point. Is it to be supposed that if such vessels were engaged, not in legitimate pearl fishing, but in some method of destruction which must necessarily exterminate the pearl oyster, and bring the whole industry to an end, they would be permitted by Great Britain deliberately to accomplish that destruction, upon the plea that in so doing they were still keeping themselves within the limits of the open sea? Or would any fair mind contend that such an excuse would amount to a justification?

If the case of the Alaskan seal fishery was reversed; if Great Britain was the proprietor of it, and American poachers were attempting its extermination, as a pretended incident to the freedom of the sea; if a remonstrance addressed to our government had elicited the admission that the acts complained of ought to be restrained, but that the government for political reasons was unable to effect it, it is perfectly certain that the subject would pass very speedily out of the domain of speculations in abstract international law, and our government would be apprised, that if unable to restrain its citizens from an outrage upon British rights which it did not assume to defend, the necessary measures would be taken by the injured party to protect itself.

These illustrations of the policy of Great Britain are not cited as casting any reproach upon that government. On the contrary the principle upon which they rest, even though it has been sometimes overstepped, is not only defensible, but is necessary to the protection of the widespread interests in which the people of that nation are concerned. Nor could a wrong on the part of the United States be justified by showing that similar or greater wrongs had been committed by Great Britain. They are referred to as applications of the underlying principle in international law which subordinates, in case of clear necessity, the abstract right of individuals upon the high seas to the preservation of important national rights and interests, that are brought into peril for the purposes of private gain. If a principle so obvious in its propriety and so necessary in its application needs to be supported by precedents, those set forth by one of the most enlightened of nations, and the first maritime power of the world, are surely entitled to respect, and may be justly quoted against itself.

But it is to be borne in mind in this discussion, that Great Britain has never yet, in all the correspondence that has taken place, asserted the right of the Canadians to do what they have been engaged in. The question is not one of abstract theory. It is whether the Canadian ships have an indefeasible right to do precisely what they have done and are doing, despite the necessary consequences that must follow. This is the issue in the case, to which all other inquiries are only subordinate. It is for those who set up such a right to sustain it. And if it can be supposed to be sustainable by precedents, it is for those who assert it to produce them. Mr. Blaine inquires in his recent communication, whether the United States government is to understand that her Majesty's government maintains that the right contended for by Canada exists. This is a question to which he will not be likely to obtain a direct reply. As before stated, that government has once conceded the justice and the expediency of a convention by which such a claim would be prohibited. She has in former years entered into a convention with Norway, which is still in force, for establishing a close time for the seal fisheries of that region, in which British and Norwegian vessels participate. Were only British instead of Canadian vessels concerned in the sealing business at Alaska, the convention would long ago have been completed. The interests of Great Britain are on the

side of the preservation of the seals. The manufactures of seal-skin are a very large industry in London—larger than in any other place in the world. And in the commercial value of the product, Great Britain has a larger interest than any other country. The relation between Great Britain and Canada is very peculiar. In theory the latter is a British colony. In fact it is independent. Great Britain can exercise a certain influence over it, but has no means of governmental control. An attempt to override the Canadian government is not likely, to be made, and would not succeed. The Governor-General is but a dignified figure-head, with but little real authority, and is not expected to allow himself to be drawn into collision with the provincial government, or with Canadian public opinion. In matters like that under discussion, Canada takes her own course. In fitting out ships to take seals in the Behring Sea, she asks neither the consent nor the advice of the mother country, nor does that country or its people share the profit or loss of the adventure. Our controversy on the subject is really with Canada, and not with Great Britain. But in complaining against the depredations of these cruisers we can only address Great Britain, who thus stands between us and Canada, not as an umpire, but bound to support the claims of her colony so far as she can, and not to concede away, unless compelled to, any rights for which the colony contends. She may be unable to concur in its justice, but is not called upon to say so, as long as the question can be evaded. The consequence is, in such a case, that her Majesty's ministers temporize and delay; they engage in the discussion of abstract and incidental questions, or transmit the contentions of the colonial government, without committing themselves directly upon the decisive point on which the controversy turns. They courteously, slowly, and diplomatically evade the real issue, and decline to concede that the colony is in the wrong, well knowing by experience, that whatever administration may be charged for the time being with the government of the United States will, in the efforts it makes to assert its rights, encounter the hearty condemnation of the political party opposed to it; that the arguments it addresses to the foreign government will be abundantly answered and refuted by American writers, and their authors held up to derision; and that the next election is very likely to bring into power a new administration, which may abandon the contentions of their predecessors and put the case on entirely different grounds.

In this, as in all other international controversies, one remark holds good. A nation divided against itself can never achieve a diplomatic success. A government that is not backed up by the unanimous sentiment of its people, but is opposed in its dealings with foreign nations by a large share of the best intelligence of its own country, if not in the ends it seeks, at least in all the means it takes to obtain them, will never be a formidable figure in diplomacy, especially when its force is found to expend itself in argument rather than in action. To peruse the discussions of most questions of this sort in the American press would lead the unlearned reader to conclude that one proposition in international law, at least, can be regarded as settled; that is, that whatever is asserted by our own government is necessarily wrong. This point is readily conceded by our adversaries, but tends more to simplify disputes than to conduct them to results favorable to our own side. If our government is demanding what is wrong, the demand should at once be abandoned. If it is claiming what is right, and what is worth claiming, it should receive the support of all parties, whether all the points taken, and all the arguments by which it endeavors to support its case, prove universally convincing or not. The task of refuting them may be well enough left to the other side. In the course of this controversy, very little has appeared in print in the United States which tends to support our government, or to indicate that American public sentiment sustains it. But much ability and learning have been devoted to answering the arguments and disproving the facts upon which the government has relied. The authors can have the satisfaction of knowing that all these contributions to the British side of the discussion are promptly put on file in Her Majesty's Foreign Office, and will not fail of their effect. Great Britain affords us no corresponding advantage. Not a word has been uttered or printed in that country, so far as is known, against the Canadian contention, or in support of

that of the United States. The suggestion that the government might be prejudiced in conducting the discussion silences at once the tongues and the pens of both parties. And if a new administration were to come into power, it would take up this subject where its predecessors left it, without any change of front whatever.

The application made by the American government to Great Britain when the depredations complained of began, for a convention, by agreement of the countries interested, under which the capture of the seals should be regulated, was the proper course to be taken. International courtesy required it, before proceeding to any abrupt measures. That reasonable patience and forbearance should be shown by the United States in giving time for such a proposal to be considered and acted on, and all needful information regarding it to be obtained, was also an obvious propriety of diplomatic intercourse, which can rarely be expected to move rapidly. But five years have now passed away. It is virtually settled that no such convention as proposed will take place, and that Great Britain will not interfere to defend the Alaskan seal fisheries against the operations of the Canadian vessels. Meanwhile the destruction of seal life has gone on with such rapidity that, as already shown, four-fifths of its annual product is gone. If much more time is to be spent in discussion, the subject of the discussion will come to an end. If the United States government should now proceed temperately but firmly to put an end to the destruction of the seals in the breeding time, by preventing, through such exertion of force as may be necessary, the further prosecution of that business by any vessels whatever between Alaska and the Pribyloff Islands, can there be a question that such a course would be completely justified? Is there any other alternative, except to submit to the speedy and final destruction of the seal and its dependent industries? That this would lead to any collision with Great Britain is not to be apprehended. The question then presented to that government would be, not whether it should admit in a paper discussion that Canada is in the wrong, and agree to undertake the defence of the United States against that colony, but whether she is prepared to send an armed force to assist and support Canada in the work of destruction; a work which, as has been seen, Great Britain has never asserted to be right, has once promised to agree in suppressing, and has joined with Norway in suppressing in another seal fishery. And in face of the fact also that the business interests of Great Britain are more largely interested in the preservation of the seal than those of Canada are in the temporary profits of its extermination. It would be an aspersion upon that country, not warranted by its history nor by the character of its people, to suppose that its government would fight in support of a cause that it cannot defend as just. Great Britain would be relieved of an embarrassment and an annoyance, if the United States government would thus terminate a fruitless and unprofitable discussion, by the assertion in its own behalf of its plain rights, and cease importuning Great Britain to take that assertion upon herself. It would be derogatory to the dignity of our country to prolong such importunity, after it is proved to be unavailing.

Arbitration has been spoken of as a means of composing the dispute. But that has been already proposed by the United States, without success. The offer has been met by a counter proposal to arbitrate, not the matter in hand, but an incidental and collateral question. That resource is therefore out of the question. It would be easier to settle the controversy than to settle the points and preliminaries of an arbitration. Two things must concur to make an arbitration useful; first, that the question submitted should be the question at issue, whether the Canadians have or have not the right, as against the United States government, to do exactly what they are doing; and next, that pending the lingering progress of such an arbitration, the depredations in question should be suspended so that the destruction shall not be accomplished while it is being debated whether it shall take place. How far the arbitration of such a question is consistent with the honor and dignity of our country is an enquiry more consonant with the traditions of earlier days than with the ideas of the present. Arbitration is just now the panacea through which all swords are to become ploughshares. In time it will be seen whether it is a universal remedy, or whether, like numerous other panaceas which have from time to time engaged

the attention of the world, it is only an alleviation, useful in certain cases. The present instance certainly goes to show that it is a resource more attractive in theory than available in practice.

It is announced in the newspapers that an application has been made to the Supreme Court of the United States for a writ of prohibition to arrest further proceedings in the case of a Canadian vessel condemned in a Court of Admiralty for violation of the act of Congress prohibiting the taking of seals in the Behring Sea. It has been stated on the floor of the House of Commons by one of her Majesty's ministers that this application is at the instance of the Canadian government. And he carefully distinguished the questions involved in it from those which are the subject of diplomatic discussion. In this distinction he is undoubtedly right. So far as can be understood from the published report, the only questions that it would seem can be brought before the Court are, whether there is any act of Congress which reaches the case sought to be reviewed; if there is, whether Congress exceeded its constitutional powers in passing it; whether the proceedings under it have been in compliance with its provisions; and whether the case can be brought before the Supreme Court by this form of application. It is not intended here either to consider or to express an opinion upon any of these questions. It would be impossible to discuss them intelligently, without a precise knowledge of the facts, circumstances, and proceedings that will be laid before the Court. It would be useless, since the determination of the Court must prevail, whatever private speculations are indulged in. And it would be improper, while the case is pending before the Court. In due time the questions will be decided, so far as is found necessary, and will be decided rightly. Nor is the effort to bring the case before the Court a just subject of criticism. The Court is open to all the world in a proper case and in a proper way. Whether the case and the way are such as rightly invoke its jurisdiction are points upon which all parties in interest have a right to be heard. Meanwhile it is enough to say that the questions likely to be involved, so far as they can be anticipated by those not concerned in the litigation, do not bear upon the enquiries that have been touched upon in these remarks. Whether a vessel can be forfeited by decree of an Admiralty Court, must depend on the statute under which the Court proceeds, and the extent of its application. Whether existing legislation on the subject may require to be supplemented, extended, or recast, in order to effect that result, may need to be considered. But the power of the government meanwhile to protect the national interests against foreign invasion, by such and so much force as may be found necessary in the emergency, is a power incident to sovereignty, and to be exerted upon the responsibility and within the just discretion of the Executive.

There are three methods by which the Behring Sea question can be settled, and by one or other of which it must soon be disposed of. First, by putting a stop without further debate to the depredations of individual foreigners upon the breeding seals. Second, by conceding to these foreigners the right to destroy the fishery, and withdrawing further remonstrance. Third, by continuing the discussion with Great Britain of the abstract questions supposed to be involved, until the extermination of the seal is completed, and the subject of the dispute thereby exhausted, for which we shall not have long to wait. If the last course is taken, the credit of it will be due less to the administration charged with the conduct of our foreign relations than to the public sentiment which it represents, and by which it must be guided.

ourt is open
ase and in a
ease and the
voke its ju-
hich all par-
to be heard.
say that the
ed, so far as
ose not con-
ot bear upon
ouched upon
a vessel can
n Admiralty
tatute under
nd the extent
existing le-
require to be
recast, in or-
y need to be
f the govern-
the national
sion, by such
be found ne-
a power inci-
be exerted
within the
ve.
by which the
e settled, and
must soon be
g a stop with-
predations of
the breeding
g to these for-
y the fishery,
emonstrance.
scussion with
act questions
ntil the exter-
mpleted, and
thereby ex-
all not have
urse is taken,
less to the ad-
he conduct of
to the public
sents, and by